

Voting Behavior on the FCC

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## *Voting Behavior on the FCC*

Despite the fact that they allocate important advantages in our society, political scientists have paid scant attention to voting behavior on federal regulatory agencies. This paper is exploratory, focusing on dissensual behavior on the FCC. Several methods including bloc analytic and scaling techniques as developed by the judicial behavioralists are used. In at least two areas, program standards and licensing criteria, clearly identifiable voting patterns reflecting differences in "regulatory ideology" are found. Moreover, these patterns are related to the Commissioners' partisan affiliations and appointing President.

### INTRODUCTION

IN COLLEGIAL FEDERAL regulatory commissions, as in collegial courts or legislative bodies, the determinative and authoritative decisional process takes the form of individual voting. Political scientists, however, know precious little about voting patterns on such commissions. Unlike the Supreme Court or Congress, virtually no research has occurred here. We lack even raw summary data concerning voting patterns on these commissions, let alone any sophisticated investigation into the determinants of such patterns. (On occasion, of course, someone will do a case study of some dramatic maneuverings affecting Commissioners' votes in a highly publicized or controversial case,<sup>1</sup> but this is not the material from which generalizations can confidently be drawn.)

The decisions of such agencies may not be so glamorous as Supreme Court cases expanding First Amendment or due process rights, or so dramatic as controversial measures enacted by close Congressional roll calls, but they do not deserve to be ignored by political scientists. In an earlier generation, regulatory agencies were a primary focus for research and several major works resulted.<sup>2</sup> More recently, how-

\* This is a much revised version of a paper presented at the 1968 meeting of the Midwest Political Science Association. Financial support from the University of Kentucky Research Foundation and research assistance from Miss Sharon Combs are gratefully acknowledged.

<sup>1</sup> E.g., Victor Rosenblum, "How to Get Into TV: The FCC and Miami's Channel 10," in Alan Westin (ed.), *The Uses of Power* (New York: Harcourt, Brace & Co., 1962), pp. 173-227.

<sup>2</sup> See, e.g., Robert E. Cushman, *The Independent Regulatory Commissions*

ever, the discipline has paid little attention to these bodies, either in traditional or behavioral research. Seemingly, political science finds regulatory commissions unimportant, passé, and perhaps impenetrable.<sup>3</sup>

This inattention is all the more difficult to understand when we consider that federal regulatory agencies allocate advantages and disadvantages which often have as great if not greater impact upon the fortunes, economic or otherwise, of the citizenry than do Supreme Court pronouncements or legislative measures. Some agencies handle tens of thousands of cases annually.<sup>4</sup> Literally billions of dollars of advantages are parcelled out among competing radio and television applicants, airline, railroad and trucking firms, or natural gas or electric power distributors. Moreover, these agencies are charged with balancing the interests of industry and consumer: are utility rates equitable? do stock and bond prospectuses give accurate and sufficient data to investors? do products perform as advertised? More than quality and costs are at stake, however: will unsafe products be allowed on the market? will dangerous aviation or trucking practices be permitted? will all viewpoints or only a few be given access to the broadcasting media?

It is often charged that these regulatory commissions are ineffective in their prosecution of the consumer or "public" interest—that they are "captured" by their clientele,<sup>5</sup> or that they easily succumb to

(New York: Oxford University Press, 1941); Avery Leiserson, *Administrative Regulation: A Study in the Representation of Group Interests* (Chicago: University of Chicago Press, 1942); E. Pendleton Herring, *Federal Commissioners: A Study of Their Careers and Qualifications* (Cambridge: Harvard University Press, 1936), and Herring, *Public Administration and the Public Interest* (New York: McGraw-Hill, 1936); Marver Bernstein, *Regulating Business by Independent Commission* (Princeton: Princeton University Press, 1955).

<sup>3</sup> See the commentary to this effect by Samuel Krislov and Lloyd Musolf in their preface to *The Politics of Regulation* (Boston: Houghton Mifflin, 1964). Senator Lee Metcalf (D.-Mont.) recently expressed his concern about this situation. See his letter in 1 PS 3: 103 (1968). For a brief survey showing the paucity of college curricular offerings pertaining to regulatory agencies or activities, see Lee Metcalf and Vic Reinemer, *Overcharge* (New York: David McKay Inc., 1967), pp. 152-56.

<sup>4</sup> See the figures in Peter Woll, *Administrative Law: The Informal Process* (Berkeley: University of California Press, 1963). Woll's is about the only recent work in the discipline to focus mainly on independent regulatory agencies.

<sup>5</sup> See, e.g., Bernstein, *op. cit.*, esp. pp. 86-95; Murray Edelman, *The Symbolic Uses of Politics* (Urbana: University of Illinois Press, 1964), chaps. 2 and 3; and Samuel Huntington, "The Marasmus of the ICC," 61 *Yale Law Journal* 467 (1952).

pressures from Congressmen or other powerful political actors.<sup>6</sup> Even if true, however, such a situation is not a justification for the failure of political scientists to investigate regulatory agencies systematically. The unwillingness or inability of such bodies to fulfill initial expectations is just as much an authoritative allocation of political values as their engagement in vigorous or dramatic regulatory action would be and, as such, deserves attention. For that matter, Congress and the courts have been subjected to similar (although usually more sophisticated) charges,<sup>7</sup> yet they continue to receive their share of the discipline's investigatory attention. Moreover, it might be added, the generalizations about regulatory commissions' subservience are not very well grounded empirically. Often they are based upon a couple of case studies or highly publicized incidences of deference, or are little more than acceptances of journalistic reputations. To the extent possible, assertions about the motivations behind the actions of regulatory commissions deserve more systematic substantiation or modification.

### *Focus*

This paper explores patterns of voting behavior on one collegial federal regulatory agency, the Federal Communications Commission. Several quantitative measures will be used. One particular feature is the application of two techniques used in the study of judicial behavior—bloc analysis and Guttman scaling. In the past decade, political scientists have had considerable success in applying them to Supreme Court voting behavior. Schubert and Sprague have shown the existence of rather polarized blocs of "liberal" and "conservative" justices, albeit with varying degrees of cohesion.<sup>8</sup> And by using scalogram analysis, Schubert, Schmidhauser, Spaeth, Ulmer and others, have

<sup>6</sup> See, e. g., William L. Cary, *Politics and the Regulatory Agencies* (New York: McGraw-Hill, 1967), chap. 2; Seymour Scher, "Congressional Committee Members as Independent Agency Overseers," 54 *American Political Science Review* 911 (1960); and Bernard Schwartz, *The Professor and the Commissions* (New York: Alfred A. Knopf, 1959), *passim*, esp. chap. 7.

<sup>7</sup> See, e. g., David Truman, *The Governmental Process* (New York: Alfred A. Knopf, 1951), chaps. 11, 12, and 15; Jack Peltason, *Federal Courts in the Political Process* (New York: Random House, 1955); and Robert A. Dahl, "Decision-Making in a Democracy: The Supreme Court as a National Policy Maker," 6 *Journal of Public Law* 279 (1958).

<sup>8</sup> Glendon Schubert, *Quantitative Analysis of Judicial Behavior* (Glencoe: The Free Press, 1959), chap. 3; John D. Sprague, *Voting Patterns of the U.S. Supreme Court* (Indianapolis: Bobbs-Merrill, 1968).

shown that on several dimensions, most broadly civil libertarian and economic, the justices do appear to have cumulative levels of response to progressively more difficult stimuli.<sup>9</sup> There has been some, although not nearly enough, application of these techniques beyond the U. S. Supreme Court. Some explanatory work has been applied to a few state Supreme Courts,<sup>10</sup> to a couple of federal Courts of Appeals,<sup>11</sup> and to a few foreign appellate courts.<sup>12</sup> Despite occasional suggestions,<sup>13</sup> however, such techniques have not been applied to collegial regulatory agencies.

While the data presented here, in itself, cannot be extrapolated beyond the FCC, it is hoped that it will be a useful building-block in the development of comparative generalizations about voting patterns on collegial, rule-structured decision-making bodies. The American political system is replete with such bodies located in strategic positions, but they are embedded in different structural and, relatively speaking, politico-cultural environments. There is a need for suffi-

<sup>9</sup> See e. g., Glendon Schubert, *op. cit.*, chap. 5, and *The Judicial Mind* (Evanston: Northwestern University Press, 1965); John Schmidhauser, "Judicial Behavior and the Sectional Crisis of 1837-60," 23 *Journal of Politics* 615 (1961); Harold Spaeth, "Supreme Court Attitudes Toward Business: The 'B' Scale," in Schubert (ed.), *Judicial Decision-Making* (New York: Free Press of Glencoe, 1963); Sidney Ulmer, "Supreme Court Behavior and Civil Rights," 13 *Western Political Quarterly* 288 (1960).

<sup>10</sup> Glendon Schubert, *Quantitative Analysis*, pp. 129-42; Sidney Ulmer, "The Political Party Variable in the Michigan Supreme Court," 11 *Journal of Public Law* 352 (1962), and Ulmer, "Politics and Procedures in the Michigan Supreme Court," 46 *Southwestern Social Science Quarterly* 375 (1966); Daryl R. Fair, "An Experimental Application of Scalogram Analysis to State Supreme Court Decisions," 1967 *Wisconsin Law Review* 449; Patrick Brown and William Haddad, "Judicial Decision-Making on the Florida Supreme Court," 19 *Florida Law Review* 566 (1967); David Adamany, "The Party Variable in Judges' Voting," 63 *American Political Science Review* 57 (1969).

<sup>11</sup> Richard J. Richardson and Kenneth N. Vines, "Review, Dissent and the Appellate Process: A Political Interpretation," 29 *Journal of Politics* 597 (1967), and Louis Loeb, "Judicial Blocs and Judicial Values in Civil Liberties Cases: The Supreme Court and the U. S. Court of Appeals for the District of Columbia Circuit," 14 *American University Law Review* 146 (1965).

<sup>12</sup> Takeo Hayakawa, "Civil Liberties in the Japanese Supreme Court," in Schubert (ed.), *Judicial Behavior* (Chicago: Rand-McNally, 1965); George H. Gadbois, Jr., "Indian Supreme Court Judges: Their Ascent, Attributes and Attitudes," in Schubert and Danelski (eds.), *Comparative Judicial Behavior* (New York: Oxford University Press, 1969); and S. R. Peck, "Judicial Behavior on the Canadian Supreme Court," 45 *Canadian Bar Review* 666 (1967).

<sup>13</sup> Schubert, *Quantitative Analysis*, p. 20, and *The Judicial Mind*, p. 39.

ciently numerous investigations enabling us to develop a theory explaining the occurrence of varying patterns of voting behavior. It can hardly be argued that we have developed anything like a sophisticated understanding of voting patterns on collegial courts, legislative committees or other such bodies (excepting, perhaps, the Supreme Court, a body which is probably atypical of most collegial courts). But for the most part, some basic information about voting patterns

TABLE 1

MEMBERS AND DISSENT RATIOS OF SEVEN MAJOR FEDERAL REGULATORY COMMISSIONS  
AND U. S. SUPREME COURT

Agency and Cases Considered	Members	Cases with Dissent (%)
Interstate Commerce Commission (N = 92) <sup>a</sup>	11	54.3
U. S. Supreme Court (N = 3087) <sup>b</sup>	9	53.6
Federal Communications Commission (N = 1658) <sup>c</sup>	7	35.8
Civil Aeronautics Board (N = 146) <sup>a</sup>	5	28.1
National Labor Relations Board (N = 1131) <sup>a</sup>	5	8.3
Federal Trade Commission (N = 533) <sup>a</sup>	5	5.3
Federal Power Commission (N = 951) <sup>a</sup>	5	3.9
Securities and Exchange Commission (N = 497) <sup>a</sup>	5	2.8
AVERAGE FOR REGULATORY COMMISSIONS		19.6

<sup>a</sup> N is a 20% sample of all cases decided between 1956 and 1965. For the Interstate Commerce Commission it includes only cases decided by the full Commission. The great majority of ICC cases are decided by three man panels.

<sup>b</sup> Data is taken from Schubert, *The Judicial Mind*, p. 45, and includes all cases decided on their merits from the 1946 Term through the 1962 Term.

<sup>c</sup> N includes all cases in Vols. 1 through 10, 2nd Series, *Pike and Fischer's Radio Regulation*, running from Nov., 1963, until Aug., 1967.

or norms on such bodies has been collected.<sup>14</sup> In the case of federal regulatory commissions, we lack even systematic descriptive data.

Table 1 lists the seven major federal independent regulatory commissions along with their size and dissent rates. Three such commissions, the ICC, the FCC, and the CAB, have sufficiently high dissent

<sup>14</sup> In addition to the judicial literature cited previously, see such works as Richard Fenno, *The Power of the Purse: Appropriations Politics in Congress* (Boston: Little-Brown, 1966); James Robinson, *The House Rules Committee* (Indianapolis: Bobbs-Merrill, 1963); and James Barber, *Power in Committees* (Chicago: Rand-McNally, 1966).

levels to warrant the application of bloc analysis or Guttman scaling techniques. The FCC was chosen over the ICC because the latter body "farms out" most of its cases to three man panels, while the FCC considers all cases *en banc*. It is preferable to the CAB because its large size makes the application of quantitative techniques more interesting and more comparable to analyses of the nine-man Supreme Court. Additionally, the composition of the FCC has been relatively stable in recent years. In the five years between 1963 and 1968, only two membership changes occurred; five such changes took place on the ICC and three on the CAB during the same time period.

The data covered by this paper are all non-unanimous decisions of the FCC included in Volumes 1 through 10 of the Second Series of *Pike and Fischer's Radio Regulation*.<sup>15</sup> These volumes cover a period of nearly four years, running approximately from November, 1963, until September, 1967.<sup>16</sup> There are 593 split decisions, containing 665 non-unanimous votes.<sup>17</sup> While the Commission regulates a wide range of communication facilities, approximately 90% of its caseload is concerned with ordinary broadcast facilities, *i. e.*, radio and television stations. *Radio Regulation* categorizes the substance of each decision in legal reference guides somewhat similar to those used by West's key number system for judicial reports. These categorizations served as substantive codes for this research. Admittedly, there are fairly serious disadvantages to using legal reference guides in this capacity,<sup>18</sup>

<sup>15</sup> *Radio Regulation* is a commercial reportorial service whose clientele is composed largely of communications lawyers and engineers. It is comprehensive in that it includes informal (*i. e.*, those disposed of without a hearing) as well as formal cases. *FCC Reports*, the agency's official publication, covers only formal decisions plus a smattering of the informal ones.

<sup>16</sup> *Radio Regulation* does not place cases in strict chronological order; therefore exact beginning and termination dates cannot be given.

<sup>17</sup> In addition, there were 72 cases in which, although no dissents were cast, abstentions were recorded. An abstention must be differentiated from an "absence" or "non-participation." The latter two indicate that the member was not present, had not heard arguments or evidence offered at an earlier meeting, or otherwise had disqualified himself. One who abstained, however, could have voted in good conscience, but refrained from doing so. Within FCC circles an abstention is generally understood to be a weakened form of dissent, an expression of failure to be convinced rather than of outright opposition. (Also, on occasion, those who dissented on first votes will abstain on reconsideration votes.) If the abstentions were considered as split decisions, the percentage of the latter category rises to 40.0. However, because other small groups often lack such a voting alternative, we will not consider abstentions as dissents.

<sup>18</sup> Besides having to rely upon "coding" done for other purposes, the chief



but they were outweighed by the convenience of a preexisting coding system which made coding easier, less expensive, and avoided the problem of researcher subjectivity.

Nine men served on the FCC during the above described period. They are listed in Table 2 along with their partisan affiliation, appointing President and tenure.

TABLE 2  
FCC COMMISSIONERS, 1963-67

Commissioner	Party	Appointing President	Tenure
Rosel N. Hyde	Rep.	Truman	1946-1969 (Chairman from June 1, 1966)
Robert Bartley	Dem.	Truman	1952-
Robert E. Lee	Rep.	Eisenhower	1953-
Frederick Ford	Rep.	Eisenhower	1957-Jan. 1, 1965
E. William Henry	Dem.	Kennedy	1961-May 31, 1966 (Chairman from 1963 to resignation)
Lee Loevinger	Dem.	Kennedy	1963-1968
Kenneth A. Cox	Dem.	Kennedy	1963-
James M. Wadsworth	Rep.	Johnson	1965-1969 (replaced Ford)
Nicholas Johnson	Dem.	Johnson	1966- (replaced Henry)

Commission meetings are held weekly and last three or four hours. The agenda is usually lengthy; often 50 to 100 items of business (not all of them cases) are considered in a single meeting. Although it varies among individuals, the general level of interaction between Commissioners on policy questions seems low. Thus only those items considered really important receive any pre-meeting discussion or in-meeting debate. In other cases, the Commissioners vote on the basis of prior judgments and attitudes or follow the recommendations of staff members in whom they have confidence. Commissioners are free to switch their vote between the meeting and the writing of the opinion

disadvantage of relying on legal reference guides is that the guides are abstracted from only the majority opinion. Thus where a dissenting commissioner raises an issue which the majority ignores, it does not find its way into the coding.



disposing of the case, but this occurs only occasionally. Opinions are almost always written by staff members and adopted by the Commission, usually with a minimum of supervision or attention. Dissenting opinions, of course, are the responsibility of the dissident although staff help is not unknown here. About one-fifth of such votes are not accompanied by an opinion.<sup>19</sup>

### *Expectations*

Because there is so little research concerning voting behavior on the federal regulatory commissions, to say nothing of the FCC in particular, we have no firm basis for expecting that blocs can be identified, that votes on given dimensions will scale, or that other types of analysis will reveal meaningful voting patterns. Inferences which can be extracted from studies touching more or less peripherally on regulatory Commissioners' voting patterns are set forth in the next few paragraphs.<sup>20</sup>

The classic question, perhaps, is whether there is a relationship between Commissioners' partisan affiliations and their voting behavior. Herring and Bernstein, both respected scholars noted for their familiarity with regulatory commissions, have opined generally that little if any such nexus exists.<sup>21</sup> A quantitative analysis of this relationship has been undertaken. When votes were aggregated across all seven major commissions, Nagel found that Democratic commissioners were somewhat more likely to vote on the "liberal" side of issues than

<sup>19</sup> This paragraph is based upon interviews with FCC Commissioners and staff members. More specifically, see Bradley C. Canon, *The FCC's 'Fairness' Doctrine: Its Enforcement and Impact* (unpublished Ph.D. dissertation, University of Wisconsin, 1967), pp. 256-61, and 291, and Harold B. Meyers, "The FCC's Expanding, Demanding Universe," *Fortune* (June, 1966), pp. 151-54. For the perspective of a former ICC Commissioner, see Anthony P. Arpaia, "The Attitude of Several Forms of Transportation Toward Regulation," 20 *ICC Practitioners' Journal* 853 (1953), pp. 853-54. More generally, see Kenneth Culp Davis, *Administrative Law and Government* (St. Paul: West Publishing Co., 1960), pp. 224-25.

<sup>20</sup> Schubert has suggested that the voting behavior of federal regulatory Commissioners should manifest greater consistency on cumulative scales than that of Supreme Court justices. See *The Judicial Mind*, p. 39. He believes this would be the case because the comparative homogeneity of stimuli received by the Commissioners reduces the probability of their responding to stimuli from different dimensions. His is an offhand remark, however, and is not based upon any evidence about regulatory commission voting behavior.

<sup>21</sup> Herring, *Federal Commissioners*, pp. 10-11; Bernstein, *Regulating Business*, p. 104.

were Republicans.<sup>22</sup> During the 1963-67 period, the FCC was composed of four Democrats and three Republicans. Thus we might expect some manifestations of partisan and/or ideological voting to occur. However, an hypothesis based on Nagel's findings must be highly tenuous for three reasons: (1) his data was not broken down by commission; (2) the period covered by his data ends in 1956; and (3) Nagel's findings did not show a very strong relationship between partisan affiliation and "liberalism."

In a somewhat more impressionistic analysis of FCC voting behavior, Murray Edelman, a careful student of the agency,<sup>23</sup> tells us that ideological blocs are likely to consist of a majority of six and a minority of one. He puts it thusly:

The dynamics of the process are impossible to see, but . . . there is almost always one, and almost always only one, FCC Commissioner who chronically dissents from the decisions of his colleagues that vest highly lucrative rights in the public domain in established licensees. There always is an Irwin Stewart, Lawrence Fly, Clifford Durr, or Freida Hennock, but the function of these people is to voice a politically feeble protest against the dominant pattern. . . .<sup>24</sup>

Journalistic commentaries or law review studies of the behavior of the FCC as a body may also lead to expectations about individual behavior. Such commentaries have established or reinforced the critical folklore which depicts the FCC as highly inconsistent in its decisions, subject far more to immediate and pedestrian political pressures than to long-range planning or philosophical considerations.<sup>25</sup> The charge

<sup>22</sup> Stuart Nagel and Martin Lubin, "Regulatory Commissions and Party Politics," 17 *Administrative Law Quarterly* 39 (1964). Nagel defines "liberal" as votes in favor of the consumer, shipper, investor, labor, or small business when contrasted with alternatives favoring the seller, producer, transporter, management or larger firms.

<sup>23</sup> See his *The Licensing of Radio Stations in the U.S.* (Urbana: University of Illinois Press, 1951).

<sup>24</sup> *Symbolic Uses*, p. 72.

<sup>25</sup> See, e.g., Jerome Barron, "The Federal Communications Commission's 'Fairness' Doctrine: An Evaluation," 30 *George Washington Law Review* 1 (1961); G. E. and Rosemary Hale, "Competition and Control: Radio and Television Broadcasting," 107 *University of Pennsylvania Law Review* 585 (1959); Note, "Diversification and the Public Interest: Administrative Responsibility of the FCC," 66 *Yale Law Journal* 365 (1957); Rosenblum, *op. cit.*; Louis Jaffe, "The Scandal in TV Licensing," *Harper's* (Sept., 1957), pp. 77-81; William Costello, "Whose Interests Interest the FCC?" *New Republic* (November 24, 1958), pp. 11-14; John Fischer, "How to Keep Congress Honest," *Harper's* (May, 1958), pp. 14-20.

is that although the FCC may establish extensive licensing criteria, praiseworthy programming standards, or other laudable policies, it often appends crippling qualifications or makes numerous exceptions to them. Failing that, the Commission will frequently ignore or explain away violations or refuse to impose meaningful sanctions when it does find a violation. In noting such behavior, political scientists have explained it in terms of interest group theory, agency-clientele symbiosis, or career ambition.<sup>26</sup> At any rate, if the picture painted above is any-

TABLE 3  
DISTRIBUTION OF NON-UNANIMOUS VOTES ON THE FCC, 1963-67

Distribution	N	%
6-1	68	10.2
5-1	209	31.4
4-1	86	12.9
3-1	34	5.1
5-2	71	10.7
4-2	103	15.5
3-2	51	7.7
4-3	43	6.5
TOTAL	665	100.0
Solo Dissents	397	59.7

where near accurate, we would expect that the voting behavior of at least some of the Commissioners would be inconsistent in regulatory issue dimensions; consequently, blocking and scaling techniques might not have much utility for ordering and explaining voting patterns.

#### VOTING PATTERNS

##### *Distribution of Dissenting Votes*

The most striking thing about the distribution of split votes on the FCC is the large number of solo dissents (see Table 3). Almost 60% of the non-unanimous decisions are in this category by virtue of one negative vote.<sup>27</sup> This contrasts rather sharply with the incidence of

<sup>26</sup> See e.g., Edelman, *Symbolic Uses*, chaps. 2 & 3; Truman, *op. cit.*, pp. 416-21; David Welborn, "Presidents, Regulatory Commissions, and Regulatory Policies," 15 *Journal of Public Law* 3 (1966); Rosenblum, *op. cit.*

<sup>27</sup> The percentage would be three points higher were abstentions included in the computations as all but five of them were solos.

solo dissents on other small groups we know something about. In five mid-1950's Terms, only 17.1% of the split decisions on the Supreme Court were in this category.<sup>28</sup> Likewise, while we have no quantitative analyses of Congressional committees, in this regard it seems safe to conclude that solo dissents are, by comparison to the FCC at least, relatively infrequent.<sup>29</sup>

Three explanations of this disparity come to mind. One is the statistical probability that solo dissents are more likely to occur in smaller groups; that is, given the existence of one dissent (a necessary prerequisite for inclusion in our universe), the chances of finding a second dissent increase with the size of the group.<sup>30</sup> Second, a psychological factor may also be relevant here in that a participant's willingness to stand alone in opposition to the group may diminish as the group becomes larger. At any rate, the FCC is somewhat smaller than the Supreme Court and considerably smaller than most Congressional committees.

The third explanation revolves around the norms pertaining to solo dissents in the varying collegial groups. There is considerable evidence that strong norms proscribing such behavior exist in most Congressional committees, that dissenting alone is for most Congressmen a rare and solemn act.<sup>31</sup> It also appears that such norms exist for the Supreme Court although with a somewhat lessened effectiveness.<sup>32</sup> While in-

<sup>28</sup> Schubert, *Quantitative Analysis*, p. 145 ff.

<sup>29</sup> See Fenno, *op. cit.*, pp. 460-69, and Donald Matthews, *U. S. Senators and Their World* (Chapel Hill: University of North Carolina Press, 1960), chap. 7.

<sup>30</sup> This phenomenon is illustrated below by breaking down the incidence of solo dissents within both the FCC and the Supreme Court according to the number of members taking part in the case.

FCC		Supreme Court	
No. of Participants	% of Solo Dissents	No. of Participants	% of Solo Dissents
7 (N = 182)	37	9 (N = 1111)	17
6 (N = 312)	67	8 (N = 411)	27
5 (N = 137)	60	7 (N = 127)	33

(Data on the Supreme Court is calculated from Schubert, *The Judicial Mind*, Table 3, p. 47.)

<sup>31</sup> Fenno, *op. cit.*, chap. 5; Matthews, *op. cit.*, chap. 7.

<sup>32</sup> For evidence of this norm, see Glendon Schubert, *Constitutional Politics* (New York: Holt, 1960), pp. 115-32; David Danelski, "The Influence of the Chief Justice in the Decisional Process," in Murphy and Pritchett (eds.), *Courts, Judges and Politics* (New York: Random House, 1961); and Edwin McElwain, "The Business of the Supreme Court as Conducted by Chief Justice Hughes," 63 *Harvard Law Review* 6 (1949).

vestigation of the FCC along these lines is highly peripheral, no evidence of such a norm has emerged.<sup>33</sup>

Table 4 lends support to the suspicion that there is no strong institutional norm militating against solo dissents within the FCC. While the frequency with which Commissioners cast single negative votes

TABLE 4  
FCC COMMISSIONERS' DISSENTING BEHAVIOR

Commissioner	Partic. in Split Decis.	Dissents		Solo Dissents	
		N	% (of partic.)	N	% (of all dissents)
Bartley	620	321	(51.8)	180	(56.1)
Cox	597	230	(38.5)	110	(47.8)
Ford	134	28	(20.9)	7	(25.0)
Loevinger	584	107	(18.3)	23	(22.8)
Lee	601	88	(14.6)	27	(30.7)
Johnson	236	30	(12.7)	5	(16.7)
Hyde	593	74	(12.5)	24	(32.4)
Wadsworth	354	44	(12.4)	10	(22.8)
Henry	331	37	(11.2)	11	(29.7)

varies, by comparison to the justices of the Supreme Court no member of the FCC is at all reluctant to dissent alone. Commissioner Johnson, the FCC's low man in this regard, still exceeds Justice William O. Douglas, the Supreme Court's champion solo dissenter, by 0.8 of a percentage point (Johnson = 16.7, Douglas = 15.9).<sup>34</sup>

The Table also supports Edelman's observation that there is a "dissenting role" within the Commission (although it obviously gives us no evidence about the direction of the votes cast by Commissioners filling such a role). Commissioners Bartley and Cox have between them three-quarters of all the solo dissents cast and are obviously prime candidates for such a role. Note that there are two frequent dissenters rather than the one envisioned by Edelman. However, the fact that they do not often dissent together (this occurs only in 64 instances) indicates that they have staked out separate and substantively distinct "dissenting roles."

<sup>33</sup> See Canon, *op. cit.*, chap. 8.

<sup>34</sup> Data on justices' dissent rates comes from Schubert, *Quantitative Analysis*, pp. 124-25, 145 ff.

*Bloc Analysis*

Both Schubert and Sprague have advanced methods for constructing bloc analysis matrices. Due to its simplicity and objectivity, we will use that developed by Sprague.<sup>85</sup> However, the interpretation will be based in large measure upon criteria offered by both scholars.

TABLE 5  
FCC COMMISSIONERS INTERAGREEMENT SCORES

	Ford	Hyde	Lee	Johnson	Wadsworth	Henry	Loevinger	Bartley	Cox
Ford	—	80.6	60.5	•	•	66.8	57.7	46.5	53.9
Hyde		—	80.4	79.7	79.1	64.6	72.7	41.2	49.1
Lee			—	76.1	74.5	70.5	65.0	39.0	54.9
Johnson				—	78.6	•	71.1	34.4	62.0
Wadsworth					—	77.3	68.6	42.7	54.5
Henry						—	70.4	51.9	60.4
Loevinger							—	51.1	45.3
Bartley								—	33.3
Cox									—
Commission Cohesion: 61.1									
Sprague's Bloc Criterion:	80.6				Schubert's Bloc Criterion: 70.0				
Blocs:					Blocs:				
Ford					Ford				
Hyde					Hyde				
					Lee				
					Johnson				
					Wadsworth				
					Henry				
					Loevinger				
					71.9				

• Did not serve simultaneously.

Table 5 presents interagreement ratios between all Commissioners on all split decisions in the four year period covered. By Sprague's

<sup>85</sup> In brief, Sprague places the two men having the highest interagreement rate on the left hand side of the matrix. The individual having the next highest agreement rate with one of them occupies third place. Of those remaining, the man having the highest rate of agreement with the occupant of the third place is put fourth, etc. For particulars, see Sprague, *op. cit.*, pp. 31-51.

comparatively stringent criterion for defining blocs,<sup>86</sup> only the Hyde-Ford dyad can be so identified (and it just barely meets the criterion). However, using Schubert's (somewhat more easily obtained) 70% ratio criterion,<sup>87</sup> all Commissioners except Bartley and Cox constitute a bloc. Beauty, then, is in the eye of the beholder; the existence of blocs is as much a matter of criteria and interpretation as anything else.

It seems clear, nonetheless, that a gap separates the top seven Commissioners from the bottom two in Table 5. The former have what we might term a moderately high degree of interagreement and are not marked by very identifiable sub-blocs. Bartley and Cox, of course, are not allied and have the lowest interagreement ratio on the matrix.

It can be asked, however, whether the large and seemingly cohesive bloc emerging in Table 5 is merely the balanced product of a multifactionalism which varies with the issues, or whether it is latitudinally stable (*i. e.*, holds together across the issues). To find out, we have constructed matrices of split decisions in four major issue areas.<sup>88</sup> Limitations of space preclude reproduction of the matrices here, but their content is summarized in Table 6.

In general, the bloc structure in the four matrices is rather similar to that found in Table 5. To be sure, there are some differences. For instance, by Schubert's criterion two blocs exist in the licensing standards area. But when they are combined, they obtain an inter-agreement ratio of 69.0%, or just 1.0% short of Schubert's 70.0% criterion. Thus while the two blocs can be differentiated, they are a far cry from being polarized. To take another example, in the cable television (CATV) regulation area Cox joins his colleagues to form an almost all-inclusive majority. A "bloc" can be identified here only

<sup>86</sup> An interagreement ratio is the number of cases in which two Commissioners voted on the same side over the total number of cases in which both Commissioners participated, expressed as a percentage. Sprague defines a bloc as any group of individuals possessing an average interagreement ratio equal to or greater than the percentage halfway between the average interagreement ratio of the entire body and 100%. For example, if the FCC's overall interagreement rate were 50%, any group of Commissioners with an interagreement rate of 75% or more would constitute a bloc. See *ibid.*, pp. 53-60.

<sup>87</sup> *Quantitative Analysis*, p. 91. Schubert terms 70% or better a "high" rate of interagreement and 60% through 69% a "moderate" rate. As the cohesion of the entire body is slightly higher within the FCC than in the Supreme Court, we have ignored Schubert's "moderate" category and accepted the "high" category as his definition of a bloc.

<sup>88</sup> The categories were based upon *Radio Regulation's* legal coding system. Categories with small N's were not considered.



because Bartley believes that the FCC has no power to regulate cable television systems. His systematic votes against all positive acts of regulation have produced 67 solo dissents.

TABLE 6

BLOCS FOUND IN FCC VOTING MATRICES IN FOUR MAJOR ISSUE AREAS, 1963-67

Issue Area	Commission Cohesion; Sprague's Criterion in Parentheses	Blocs by Sprague's Criterion and Interagreement Ratio	Blocs by Schubert's 70.0 Criterion and Interagreement Ratio
Administrative Procedure (N = 138)	59.3 (79.7)	Ford Hyde 79.8 Loevinger	Ford Hyde Loevinger Wadsworth 72.7 Henry Lee Johnson
CATV Regulation (N = 108) <sup>a</sup>	64.3 (82.4)	Hyde Wadsworth Johnson Lee 84.4 Cox Loevinger	Hyde Wadsworth Johnson Lee 84.4 Cox Loevinger
Licensing Standards (N = 92)	58.2 (79.1)	Ford Hyde Lee 81.6	Ford Hyde Lee 81.6 Loevinger Henry Wadsworth 74.4
Programming Regulation (N = 83)	56.8 (78.4)	Hyde Lee 81.5	Hyde Lee Henry Wadsworth 71.2 Loevinger

<sup>a</sup> The FCC entered the field of CATV regulation after Ford and Henry left the Commission. Thus they were not included in the construction of matrices.

In sum, it seems reasonable to assert that the FCC does contain an identifiable voting bloc (by Schubert's criterion) centering on Hyde, Lee, Wadsworth, Loevinger and Henry which holds firm across all

broad issues. Others are added to this core depending on the issue area. However, Bartley is excluded from all blocs and Cox is a member of but one. The previously noted dissenting roles of these two Commissioners also apply across the board (except for Cox and the cable television dimension). However, they agree with each other even less than they agree with the majority. Cox picks up some support from Johnson in the programming and licensing standards categories, but not enough for the dyad to be labelled a bloc.<sup>39</sup>

### *Cumulative Scaling*

Guttman or cumulative scaling provides a method for determining whether a single dominant issue motivates voting behavior in a series of cases. This technique has been a cornerstone of much behavioral research about the Supreme Court and is sometimes applied to legislative roll calls. In judicial research, the investigator subjectively selects cases which he believes are likely to have a common stimuli, e. g., claims of deprivation of civil liberties. They are usually scaled "by hand," often with the elimination of those cases in which the voting patterns do not "fit" the scale. As previously mentioned, our common stimuli have been selected by the Pike and Fischer legal coding system. We have scaled all non-unanimous cases possessing selected common legal references; we did not eliminate cases which failed to "fit" on the scale. As explained earlier, the coding process (and thus the scaling method) was selected for reasons of limited resources, convenience, and objectivity. Obviously, it reduces the possibilities of obtaining acceptable scales vis-a-vis the more conventional method described above. On the other hand, it increases our confidence in the validity of those scales which are obtained.<sup>40</sup>

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<sup>39</sup> Through vigorous joint dissents, Cox and Johnson have earned a reputation as chronic "malcontents" in these areas. See in particular their widely publicized study, *Broadcasting in America and the FCC's License Renewal Process* (mimeo. available from the FCC, 1968). More generally, see accounts of their actions in the trade publication *Broadcasting Magazine*, *passim*. However, it is interesting to note that they do not agree sufficiently often to be classified as a "bloc."

<sup>40</sup> It should be emphasized here that the scaling reported or attempted in this paper is hardly a definitive or exhaustive account of the applicability of scaling techniques to FCC votes. If the *Radio Regulation* codes were ignored, careful use of "hand" scaling or application of more sophisticated MSA techniques developed by J. C. Lingoes or Duncan MacRae may show the existence of previously untemplated dimensions or variations of those explored in this paper. It should also be noted that no attempt has been made here to scale FCC votes on engineering problems.

With minor modifications, the scales were constructed (or attempted) according to the rules Schubert sets forth in his *Quantitative Analysis of Judicial Behavior*.<sup>41</sup> The interpretation is based upon the conventionally accepted Coefficient of Reproducibility (CR) score of .90 and Coefficient of Scalability (CS) score of .60.<sup>42</sup> The brevity of their tenure has caused us to exclude Commissioners Ford and Johnson from most scales. As Commissioners Henry and Wadsworth participated in slightly more than half of our split decisions (see Table 4), we have generally included them in the scales.

We attempted to scale votes in five major issue areas, the four used in the preceding subsection and one dealing with the Commission's interpretation of its statutory authority. No acceptable scales were found in the administrative procedure or licensing standards areas.<sup>43</sup> The latter, however, is explored by other means in the next subsection. We report below on the scales obtained in three dimensions: program regulation, the regulation of cable television systems, and the FCC's interpretation of its statutory authority.

(1) *Program Regulation*. While the law prohibits direct censorship,<sup>44</sup> the FCC does engage in some forms of program regulation.<sup>45</sup> For two reasons we might expect Commissioners to possess compara-

<sup>41</sup> Pp. 280-90. Because non-participation is more frequent on the FCC than on the Court, we have used the number of dissenting votes as boundaries rather than the closeness of the division (5-4, 6-3, 7-2, etc.).

<sup>42</sup> *Ibid.*, p. 271. Sidney Ulmer, "Scaling Judicial Cases: A Methodological Note," 4 *American Behavioral Scientist* 31 (1961). Because the FCC is smaller than the Supreme Court, we have not followed Schubert's technique of computing coefficients only upon those cases in which dissents equalled or exceeded 20% of the total number of votes.

<sup>43</sup> The attempt was made on all cases in each area which were considered susceptible to a unidimensional stimuli. Additional attempts were made on several smaller groups or dimensions (determined by use of the legal codes) of the larger area.

<sup>44</sup> 47 U.S.C., Sec. 326 (1964 ed.). However, the FCC does enforce laws which require that "equal opportunity" be given candidates for public office and which prohibit the transmission of obscenity and lottery information and proscribe fraudulent or deceptive programming.

<sup>45</sup> In addition to the duties noted in footnote 44, the Commission has established several programming policies which it enforces with varied effectiveness by threats of non-renewal or other sanctions against deviant broadcasters. See Davis, *op. cit.*, chap. 4, and Canon, *op. cit.*, chap. 6. The three most important such policies are: (1) the "fairness" doctrine governing public affairs programming, (2) the limitation of time devoted to advertising, and (3) the requirement of a balanced program offering, *e. g.*, news, religion, educational or civic programs, etc.

tively intense attitudes based upon broader philosophical considerations here. First, as programs are the broadcasters' only end product, to the extent that the Commissioners believe the FCC has a social or positive "public interest" function, they would be likely to favor greater regulatory activity here. Second, this type of regulation inherently contains the "freedom of speech" issue so common to many judicial decisions. Supreme Court justices, for example, have been placed on cumulative scales more easily on civil liberties dimensions than on most others. We considered a positive vote to be one cast which favored the establishment, expansion or enforcement of program controls, and a negative vote to be one in favor of restraint, modification or abandonment of such regulations.

The attempt to construct a scale including all relevant cases (N = 74) was unsuccessful; the CR and CS fell somewhat below the accepted limits. However, when scaling was tried on subdimensional issues, three acceptable results occurred. They are summarized in Table 7.<sup>48</sup>

The longest scale contains 39 cases and is called the Enforcement Scale. It includes all license renewal cases where the Commissioners had to decide how much weight should be given to past violations of programming rules or policies. A Political Broadcasting Scale measures responses to the question of how much control the FCC should exercise over such broadcasts ("equal opportunities" or "fairness doctrine" issues) and contains 19 cases. A Rule Interpretation Scale with 14 cases measures the breadth and scope with which Commissioners are willing to interpret the formal rules governing programming (e.g., those governing the advertising of lotteries or the reporting of gambling information, or requiring sponsorship identification).

We can draw some inferences from these scalograms. Note that Cox and Hyde anchor down the extreme positions on all scales, the former favoring the establishment and enforcement of comparatively broad FCC program controls and the latter opposing this. However, the middle rankings are not particularly consistent. Bartley and Lee are wanderers, never holding the same position twice. Loevinger and

<sup>48</sup> Cases included in these issue dimensions are determined by the *Radio Regulation* legal coding system. All cases within a given code are included in scaling attempts except where their voting alternatives are obviously not capable of being interpreted unidimensionally. No case not having the requisite code is included. Mimeographed copies of the scales reported in Tables 7 and 8 are available from the author upon request.

TABLE 7  
SUMMARY DATA ON SCALOGRAMS IN PROGRAM REGULATION AREA

Commissioners	Enforcement Scale		Political Broadcasting Scale		Program Regulations Interpretation Scale		Averages	
	Rank	Scale Score •	Rank	Scale Score •	Rank	Scale Score •	Rank	Scale Score
Cox	1	100	1	100	1	100	1.00	100
Henry	2	54	2	47	4	57	2.67	52.7
Bartley	4	37	5.5	26	2	79	3.83	47.3
Loevinger	6	23	3.5	37	3	64	4.16	41.3
Wadsworth	3	40	5.5	26	5	50	4.50	38.7
Lee	5	26	3.5	37	6.5	0	5.00	21.0
Hyde	7	9	7	11	6.5	0	6.83	6.7

• As percentage of first rank.

Wadsworth are only slightly less mobile. Even Henry, who ranks second in two scales, slips to fourth in a third. It would appear that the votes of Cox and Hyde are largely motivated by philosophical attitudes toward the larger issue of the extent to which the FCC should regulate programming, while those of the remaining Commissioners are determined more by particularistic attitudes on subissues.

(2) *Cable Television Regulation.* Since early 1966, the FCC has spent much of its energy formulating policies governing the nation's rapidly growing cable television systems. CATV offers great potential for expanding the quantity and quality of viewers' fare, but at the same time it threatens the economic livelihood of smaller market tele-

TABLE 8  
SUMMARY DATA ON SCALOGRAMS IN CATV REGULATION AND INTERPRETATION  
OF STATUTORY AUTHORITY DIMENSIONS

CATV Scale		Statutory Interpretation Scale	
N = 34		N = 15	
CR = .970		CR = .903	
CS = .865		CS = .640	
Commissioners (in rank order)	Scale Score *	Commissioners (in rank order)	Scale Score *
Cox	100	Cox	100
Lee	62	Wadsworth	93
Johnson	47	Henry	86
Wadsworth	44	Loevinger	86
Hyde	35	Lee	71
Loevinger	0	Hyde	57
		Bartley	7

\* As percentage of first rank.

vision stations. Thus the degree to which these systems should be regulated has posed a considerable policy dilemma for the Commissioners.

Table 8 presents summary data from a scalogram of 34 split decisions reflecting this dilemma. Commissioner Johnson is substituted for Henry in this scalogram because nearly all of the cable television cases occurred after the latter's resignation. Because Bartley does not believe the FCC has the legal authority to regulate cable television systems and has voted consistently against all acts of regulation, he

is not included in the scalogram. (It is recognized, of course, that Bartley's behavior may reflect an attitudinal intensity toward cable television as much as a legal judgment.) A positive vote is one for a policy of protecting the economic interests of conventional television stations; a negative vote favors greater expansion or operative freedom for cable systems at the expense of conventional stations.

Since both the CR and CS are well above the limits of acceptability, we can conclude that the Commissioners responded in terms of these broad attitudinal dimensions. Cox shows up with the highest regard for the financial interests of smaller television stations while Loevinger is the most permissive toward CATV operations. While there are some differences in their response levels, Lee, Johnson, Wadsworth and Hyde all manifest "middle-of-the-road" attitudes here.

(3) *Interpretation of Statutory Authority.* As with all federal agencies, the FCC is sometimes compelled to interpret the scope and limits of its statutory mandate to regulate in substantive problem areas. This occurs when situations arise which were unforeseen by Congress or where that body "passed the buck" by couching the agency's authority in vague words or phrases. On one hand, the FCC is frequently charged with timidity and diffidence in the assertion of its authority;<sup>47</sup> from another perspective, it is accused of distorting its authority for reasons of excessive zealotry or "empire building."<sup>48</sup>

Table 8 also summarizes a scalogram of 15 non-unanimous decisions in this category. Again, Cox occupies the extreme left or most expansionist position, but it is Bartley rather than Hyde who is the chief nay-sayer here. It is also interesting to note that 12 of the 15 cases were decided positively. Of course, this does not prove the "empire building" charges; it could be that decisions not to enlarge the agency's domain never reach the voting stage.

### *Licensing Standards*

Although the FCC no longer awards licenses at the frenzied pace of the 1950's, this task still constitutes an important segment of the agency's business. Over the years, the Commission has articulated for

<sup>47</sup> Edelman, *Symbolic Uses*, chaps. 2 & 3; Bernstein, *op. cit.*, pp. 86 ff., 154 ff.; Barron, *op. cit.*

<sup>48</sup> See John P. Sullivan, "Editorializing and Controversy: The Broadcaster's Dilemma," 32 *George Washington Law Review* 719 (1964) and Whitney North Seymour, "Legal Authority of the FCC Over Program Content," 4 *Journal of Broadcasting* 18 (1959).



its hearing examiners and presumably for itself some standards for guidance in granting franchises. One criterion is that licenses are not supposed to be given which will increase the concentration of control of communications media in a given geographical area. In another area of consideration, the applicants' characteristics, the following preferences have been enunciated: (a) local applicants are preferred to outsiders, (b) owner-manager applicants are preferred to absentee-owner applicants, (c) applicants with a record of civic responsibility are preferred to those without it or those with more of it to those with less, and (d) applicants with histories of unethical economic practices

TABLE 9

PERCENTAGE OF COMMISSIONERS' VOTES SUPPORTING ADHESION TO LICENSING CRITERIA  
IN SPLIT DECISIONS

Concentration of Control Dimension (N = 39)		Licensee Qualifications Dimension (N = 34)	
Commissioner and No. of Participations	% of Votes Supporting Criteria	Commissioner and No. of Participants	% of Votes Supporting Criteria
Henry (28)	67.8	Cox (22)	72.7
Bartley (34)	67.6	Bartley (28)	56.7
Cox (34)	64.7	Henry (30)	46.7
Loevinger (34)	29.4	Loevinger (27)	33.3
Wadsworth (21)	19.0	Wadsworth (10)	30.0
Lee (32)	18.8	Lee (33)	18.2
Hyde (33)	15.2	Hyde (21)	16.0

or who have violated federal or state laws or FCC regulations are not preferred.

These two areas of criteria can be conceived unidimensionally. Positive votes are those for the establishment, expansion or enforcement of the above criteria; negative votes are those to the contrary. Of course, many licensing cases could not be placed on the unidimensional scale because they involved competing applicants, each of whom met some criteria and not others. But in 73 decisions it was possible to ascertain directional votes. However, attempts at scalogram analysis of these cases proved unsuccessful.

We can, however, illustrate voting patterns in a much simpler manner. Table 9 gives the percentage of cases in which each Com-

missioner voted to adhere to the licensing policies and standards described above. Bartley, Cox and Henry clearly stand out as being more devoted to the licensing criteria than are their colleagues. The disparity between this trio and the remainder of the Commission is particularly marked in the concentration of control dimension. Loevinger, who voted in support of the guidelines in about a third of the cases, emerges as something of a "swing-man"; the Commission also voted in this direction about one-third of the time.

It should be remembered that these voting patterns could not be scaled; responses to stimuli are not as consistent as one might imagine from looking at Table 9. Nonetheless, there are clear differences in the Commissioners' voting behavior here which may well reflect attitudinal intensities toward the licensing criteria. Moreover, the Commissioners' rankings here are similar to those found in the program regulation cases featured in Table 7.

#### SUMMARY AND CONCLUSION

In terms of the inferential expectations discussed earlier, our investigation has demonstrated the following about FCC voting patterns.

First, partisan affiliation is clearly related to the Commissioners' voting behavior on some important issues connected with broader social or economic problems. Table 10 illustrates the differences in the programming regulation and licensing criteria cases. In both areas the Democrats occupy the first four ranks and the Republicans the last three. Moreover, there is a considerable gap between both the Average Scale Score and the Average Percentage of Votes Supporting Licensing Criteria obtained by Commissioners of opposite political faiths. It is doubtful, however, that the relationship between party and voting propensity extends too far beyond these issues. Table 10 shows little difference between Democrats and Republicans in the statutory interpretation or cable television dimensions. And our application of bloc analytic techniques certainly revealed no partisan blocs—the core of the FCC's controlling bloc contains three Republicans and two Democrats.

Second, in the same dimensions as noted above as well as in the statutory interpretation dimension, there is a marked difference in the voting behavior of President Kennedy's appointees and that of Commissioners appointed by other Presidents. This, too, is shown in Table 10. Here again, the relationship is not visible in our bloc analyses where the core bloc is composed of two JFK and three non-JFK appointees.

TABLE 10  
COMMISSIONERS' RANKINGS AND SCORES IN TABLES 7-9 AVERAGED BY PARTISAN  
AFFILIATION AND BY APPOINTIVE ORIGIN

Category	Program Dimension Issues		Statutory Interpretation Dimension		CATV Dimension		Licensing Dimension Issues	
	Avg. Rank	Avg. Scale Score	Avg. Rank	Avg. Scale Score	Avg. Rank	Avg. Scale Score	Avg. Rank	Percentage of Votes in Support of Criteria
Democrats	2.50	60.3	3.75	69.7	3.33	49.9	2.50	54.9
Republicans	6.00	22.1	4.33	71.7	3.67	47.0	6.00	19.5
Kennedy Appointees	2.33	63.0	2.67	90.7	3.50	50.0	2.67	52.4
Other Appointees	5.25	28.4	5.00	57.0	3.50	47.0	5.00	30.2

In short, party and appointive origin <sup>49</sup> often do make a difference—at least they did on the FCC during the mid-1960's on questions related to the social philosophy of regulation.<sup>50</sup>

Third, Edelman's astute observation about the perennial presence of a solo dissenter in the public interest is borne out in the person of Commissioner Cox, who resides at the pro-regulation end of all dimensions, often at considerable distance from his colleagues. Of course, Bartley is an even more frequent dissenter, but our analyses have shown his dissents to be of a mixed nature. When it comes to licensing criteria, his voting pattern parallels that of Cox, but in other dimensions his votes seem to reflect, on the whole, far less regulatory zeal and, indeed, sometimes an anti-regulatory attitude.

Fourth, on the basis of the issues which we have analyzed, the evidence does not support the proposition that the Commissioners are ideologically inconsistent in their voting behavior because they respond far more to immediate political pressures or considerations of ambition than they do to internalized attitudes about those broad issues to which the FCC addresses itself. Most Commissioners showed a reasonable degree of voting consistency toward proposals that the FCC increase or enforce its regulatory commitments. This is especially true at each end of the regulatory spectrum where Commissioners Cox and Hyde demonstrated almost unflinchingly consistent rankings. Only Bartley seemed to be unusually erratic. Of course the evidence does not show a voting consistency approaching that sometimes found on the Supreme Court either. Our licensing criteria cases would not scale and the program regulation cases scaled only when subdivided.

As for our methods, we have borrowed blocking and scaling techniques from the study of judicial behavior and applied them to non-unanimous regulatory commission decisions. The first technique seemed particularly useful. We found that there is one consistent majoritarian (but not all-inclusive) bloc on the FCC. This contrasts

<sup>49</sup> Unlike partisan affiliation, the differences between Commissioners of different appointive origin are dependent upon the dichotomizations selected by the analyst. Had we compared Kennedy-Johnson appointees with Truman-Eisenhower ones (thus shifting Commissioner Wadsworth's category), the difference between the two groups would have reduced quite a bit, but still remained rather noticeable.

<sup>50</sup> Only the cable television dimension failed to correlate with either party or appointive origin. It may be that the issues surrounding cable television are only peripherally related to broader questions of regulatory philosophy. A "liberal" public interest argument can be advanced for both expanding and restricting the activities of cable television systems.

with the two (or occasionally three) minority or minimal majority blocs found on the Supreme Court—blocs whose make-up often varies considerably depending upon the issue. However, the FCC bloc's cohesion is not markedly different from that which Schubert or Sprague find for high court blocs.

To what extent bloc analysis is a useful tool for investigating other regulatory commissions or other non-judicial collegial bodies is empirically problematical. A reasonable number of voting members and a fairly high dissent rate are necessary for meaningful analysis. The FCC may be somewhat atypical in meeting these prerequisites. Still, as Table 1 shows, among the independent regulatory commissions, the ICC and the CAB seem amenable to blocking techniques. And from the multitude of other national or state collegial bodies or legislative committees, there should be at least a few more likely candidates.

We have also shown that scaling techniques can be applied successfully to the regulatory Commissioners' votes, although in our case their utility was rather limited. In part this limitation is a function of our particular method of scaling which restricted our ability to shape or explore issue dimensions and thus made more difficult the attainment of acceptable scales. But it may also be due to the fact that a much larger percentage of the FCC's votes (compared to those of the Supreme Court) deal with engineering or administrative procedural problems which do not—at least on the surface—fall on given social or economic issue dimensions. (It is recognized, of course, that on some occasions an agency will settle issues of substantive importance under the guise of a technical or procedural question.) Thus it may be that scaling techniques will not be as useful in the study of voting patterns on regulatory commissions as they have been in the study of the Supreme Court. Nonetheless, scaling techniques should not be ignored in such studies. The use of more flexible and sophisticated techniques than those applied here could render scalogram analysis a highly valuable exploratory tool, particularly for regulatory agencies that do not deal so frequently and intensively with technical or procedural questions.